

SMILEY WANG-EKVALL, LLP  
3200 Park Center Drive, Suite 250  
Costa Mesa, California 92626  
Tel 714 445-1000 • Fax 714 445-1002

**SMILEY WANG-EKVALL, LLP**  
Kyra E. Andrassy, State Bar No. 207959  
*kandrassy@swelawfirm.com*  
Michael L. Simon, State Bar No. 300822  
*msimon@swelawfirm.com*  
Timothy W. Evanston, State Bar No. 319342  
*tevanston@swelawfirm.com*  
3200 Park Center Drive, Suite 250  
Costa Mesa, California 92626  
Telephone: 714 445-1000  
Facsimile: 714 445-1002

Counsel for David Stapleton, Receiver

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

SILICONSAGE BUILDERS, LLC aka  
SILICON SAGE BUILDERS and  
SANJEEV ACHARYA,

Defendants.

Case No. 3:20-cv-09247-SI

**NOTICE AND MOTION OF RECEIVER,  
DAVID STAPLETON, FOR AN ORDER  
AUTHORIZING THE RECEIVER TO  
ENTER INTO A SETTLEMENT  
AGREEMENT WITH CORTEZ  
ENTERPRISES, INC. REGARDING A  
DEPOSIT RELATED TO 2055 ALUM  
ROCK AVENUE, SAN JOSE, CA**

**[Memorandum of Points and  
Authorities Filed Concurrently]**

Hearing:

Date: September 9, 2022

Time: 10:00 a.m.

Crtrm.: 1 – 17<sup>th</sup> Floor (hearing via Zoom)

Judge: Susan Illston

**TO ALL PARTIES IN INTEREST:**

**PLEASE TAKE NOTICE** that David Stapleton, the Court-appointed receiver (the "Receiver") over SiliconSage Builders, LLC, and its subsidiaries and affiliates (together, the "Receivership Entities"), is seeking Court approval to enter into a settlement agreement with Cortez Enterprises, Inc., regarding funds held in an escrow related to the agreement of SiliconSage Fund 1, LLC, a Delaware limited liability company (Series) – Series 4 ("SSF1") to purchase real estate located at 2055 Alum Rock Avenue, San Jose, CA 95116 (the "Property"). The Property was intended to be part of the Alum Rock project. Pursuant to the purchase agreement and addendums, SiliconSage tendered deposits totaling \$381,000 into escrow before defaulting under the agreement, although the agreement had not yet been terminated when the Receiver was appointed. When the Receiver was appointed, \$281,000 remained on deposit in escrow.

In resolution of the dispute about whether the liquidated damages clause of the agreement constituted an unenforceable penalty, the parties have agreed to divide the funds remaining in escrow, with Cortez receiving \$181,000 of the funds, and the receivership estate receiving \$100,000, less any escrow fees. The settlement agreement is attached to the concurrently-filed Memorandum of Points and Authorities.

Unless the Court issues an order in advance of the hearing, the Court will be conducting the hearing by Zoom, and instructions for appearing at the hearing will be posted approximately two days prior to the hearing. **Pursuant to Local Rule 7-3(a), any written opposition to the relief sought in this motion must be filed with the Court and served on counsel for the moving party by no later than fourteen (14) days after the filing of this motion, which is occurring on August 3, 2022.**

Concurrently with this motion, the Receiver is filing his Memorandum of Points and Authorities in support of the motion and the supporting declaration of David Stapleton (together, the "Memorandum"). Pursuant to the order limiting notice in this case, both the motion and the Memorandum are available on the website for this receivership, which is

1 [www.siliconsagereceivership.com](http://www.siliconsagereceivership.com), or by contacting proposed counsel for the Receiver at  
2 [kandrassy@swelawfirm.com](mailto:kandrassy@swelawfirm.com).

3 Based on the foregoing and for the reasons set forth in the Memorandum of Points  
4 and Authorities, the Receiver seeks entry of an order:

5 (1) Granting the motion and approving the terms and conditions of the  
6 Settlement Agreement;

7 (2) Authorizing the Receiver to enter into the Settlement Agreement and any  
8 documents he deems reasonably necessary to consummate the settlement, including  
9 escrow instructions and any cancellation notice; and

10 (3) Granting such other and further relief as the Court may deem just and  
11 proper.

12  
13 DATED: August 3, 2022

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

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16 By: /s/ Kyra E. Andrassy

KYRA E. ANDRASSY

Counsel for David Stapleton, Receiver  
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**PROOF OF SERVICE****STATE OF CALIFORNIA, DISTRICT COURT, NORTHERN DISTRICT**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

On **8/3/2022**, I served true copies of the following document(s) described as **NOTICE AND MOTION OF RECEIVER, DAVID STAPLETON, FOR AN ORDER AUTHORIZING THE RECEIVER TO ENTER INTO A SETTLEMENT AGREEMENT WITH CORTEZ ENTERPRISES, INC. REGARDING A DEPOSIT RELATED TO 2055 ALUM ROCK AVENUE, SAN JOSE, CA** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"))** – Pursuant to United States District Court, Northern District of California, the foregoing document will be served by the court via NEF and hyperlinked to the document. On **8/3/2022**, I checked the CM/ECF docket for this case and determined that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated.

**(X) (BY U.S. MAIL).** I enclosed the document(s) in a sealed envelope or package and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Smiley Wang-Ekvall, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with USPS in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

**( ) (BY E-MAIL).** By scanning the document(s) and then e-mailing the resultant pdf to the e-mail address indicated above per agreement. Attached to this declaration is a copy of the e-mail transmission.

**( ) (BY FACSIMILE).** I caused the above-referenced documents to be transmitted to the noted addressee(s) at the fax number as stated. Attached to this declaration is a "TX Confirmation Report" confirming the status of transmission. Executed on \_\_\_\_\_, at Costa Mesa, California.

**( ) STATE** I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

**(X) FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 3, 2022, at Costa Mesa, California.

/s/ Lynnette Garrett  
Lynnette Garrett

**SERVICE LIST****BY COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):**

☐ Kyra Elizabeth Andrassy  
kandrassy@swelawfirm.com,jchung@swelawfirm.com,lgarrett@swelawfirm.com,gacruz@swelawfirm.com  
☐ Daniel Blau  
blaud@sec.gov,simundacc@SEC.GOV,larofiling@sec.gov  
☐ Tamar M. Braz  
brazt@sec.gov  
☐ Patrick Michael Costello  
pcostello@vectislawgroup.com,cleee@vectislawgroup.com  
☐ Susan Scott Davis  
sdavis@coxcastle.com  
☐ Detail Construction & Waterproofing, Inc.  
sjs@dslaw.net  
☐ David B. Draper  
david.draper@ropers.com,nancy.batchelder@ropers.com,mary.mcpherson@ropers.com  
☐ Timothy W Evanston  
tevanston@swelawfirm.com,jchung@swelawfirm.com,lgarrett@swelawfirm.com,gacruz@swelawfirm.com  
☐ Robert Paul Goe  
rgoe@goeforlaw.com,kmurphy@goeforlaw.com  
☐ Great American Insurance Company  
dtobar@watttieder.com  
☐ Mitchell Bruce Greenberg  
mgreenberg@abbeylaw.com,mmeroney@abbeylaw.com  
☐ John Henry Hemann  
jhemann@cooley.com,mnarvaez@cooley.com  
☐ Fred Hjelmset  
fhtrustee@gmail.com  
☐ Ravi Jagannathan  
btaylor@taylorlawfirmmpc.com  
☐ Gregg Steven Kleiner  
gkleiner@rinconlawllp.com,aworthing@rinconlawllp.com  
☐ Edward Arthur Kraus  
ekraus@svlg.com,keb@svlg.com,edn@svlg.com,amt@svlg.com  
☐ Thomas Scott Leo  
sleo@leolawpc.com,kmoore@watttieder.com,dtobar@watttieder.com  
☐ Joshua Robert Mandell  
joshua.mandell@akerman.com,masterdocketlit@akerman.com,alexandra.byerly@akerman.com,rob.diwa@akerman.com,evelyn.duarte@akerman.com  
☐ Hal Mark Mersel  
mark.mersel@bclplaw.com,theresa.macaulay@bclplaw.com  
☐ Dennis Francis Murphy  
dennismurphy@jonesday.com  
☐ Walker Samuel Newell  
wnewell@cooley.com,efiling-notice@ecf.pacerpro.com,avera@cooley.com

1 ☐ Randy Phillip Orlik  
rorlik@coxcastle.com  
2 ☐ Brian Andrew Paino  
bpaino@mcglinchey.com, irvineECF@mcglinchey.com  
3 ☐ Parkview Financial REIT LP  
paul@parkviewfinancial.com  
4 ☐ Marie Gisele Quashnock  
marie@aqalegal.com, legaladmin@aqalegal.com  
5 ☐ Joshua Louis Scheer  
jscheer@scheerlawgroup.com, jscheer@ecf.courtdrive.com  
6 ☐ Brian G. Selden  
bgselden@jonesday.com, mreyes@jonesday.com  
7 ☐ Steven Jude Sibley  
sjs@dslaw.net  
8 ☐ Benjamin Samuel Taylor  
btaylor@taylorlawfirmnpc.com  
9 ☐ Donna Renee Tobar  
10 dtobar@grsm.com, fvillalobos@grsm.com@grsm.com

11 **BY U.S. MAIL:**

12 Counsel for Cortez Enterprises, Inc.  
13 BARTON G. HECHTMAN  
14 Matteoni, O'Laughlin & Hechtman  
15 848 The Alameda  
16 San Jose, California 95126  
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26  
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